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KRAMER LEVIN NAFTALIS & FRANKEL LLP
INTELLECTUAL PROPERTY DEPARTMENT
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIEN K. LE

Appeal 2009-005291
Application 10/696,817¹
Technology Center 2100

Before JEAN R. HOMERE, THU A. DANG, and JAMES R. HUGHES,
Administrative Patent Judges.

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL²

¹ Application filed October 30, 2003. The real party in interest is BearingPoint, Inc. (App. Br. 3.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals from the Examiner's rejection of claims 1-20 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's Invention

The invention at issue on appeal relates to a system and method for facilitating software engineering and management according to a process that is compliant with a qualitatively measurable standard, for example, the Software Engineering Institute's Software Capability Maturity Model (SW-CMM). The system includes a server system (one or more servers) that communicates with multiple client systems, and contains a database including resources accessible to the client systems. The resources include tasks to be performed within the process. (Spec. 1, ll. 6-9; 2, ll. 1-5; 3, ll. 4-30.)³

Representative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. A system facilitating software engineering and management in connection with a software development project according to a process that is compliant with a qualitatively measurable standard, comprising:
a server system operable to communicate with a plurality of client systems;

³ We refer to Appellant's Specification ("Spec."); Appeal Brief ("App. Br.") filed April 17, 2008; and Reply Brief ("Reply Br.") filed August 26, 2008. We also refer to the Examiner's Answer ("Ans.") mailed June 26, 2008.

a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects, the resources comprising at least:

first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more of:

a description of the task;

a description of how the task relates to the standard;

one or more activities to be performed for the task;

which personnel should perform the activities for the task;

one or more deliverables to be generated for the task;

one or more expected artifacts according to which the process will be measured against the standard; and

an expected time to complete the task; and

second resources comprising one or more templates, each template operable to be customized in generating one or more deliverables for one or more tasks;

the server system operable to, at one or more times during a software development project:

receive from a user associated with a client system a request for one or more resources;

retrieve the requested resources from the database; and

provide the requested resources to the user in connection with the software development project.

Reference

The Examiner relies on the following reference as evidence of unpatentability:

Miller	US 2006/0235732 A1	Oct. 19, 2006 (filed Dec. 9, 2002)
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Rejection on Appeal

The Examiner rejects claims 1-20 under 35 U.S.C. § 102(e) as being anticipated by Miller.

ISSUE

Based on our review of the administrative record, Appellant's contentions, and the Examiner's findings and conclusions, the pivotal issue before us is as follows:

Does the Examiner err in finding the Miller reference discloses "a database . . . containing resources accessible to the client systems using the server system[,] . . . the resources comprising . . . first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more" attributes of the tasks, as recited in Appellant's claim 1?

FINDINGS OF FACT (FF)

Appellant's Specification

1. Appellant does not explicitly define a "resource," or a "task" in the Specification, nor does Appellant explain how the resources "specify" the tasks and/or attributes of the tasks in the database. The Specification, however, does describe the structure and functionality of Appellant's server system and database with respect to the resources and tasks:

System 10 includes a server system 12 that provides one or more users at one or more client systems 14 access to one or more resource databases 16 that include one or more resource sets 18 Server system 12 may include one or more appropriate computer systems . . . that may collectively receive a resource request from a client system 14 and, in response to the resource request, access one or more resources from one or more resource sets 18 and communicate the accessed resources to client system 14 A resource set 18 in resource database 16 may include one or more resources that may be used to facilitate software engineering and management in connection with a software development project according to a process that is compliant with a qualitatively measurable standard. As an example and not by way of limitation, a resource set 18 may include information specifying one or more tasks that an organization may execute to reach one or more particular MLs of SEI's SW-CMM, as described more fully below

In particular embodiments, tasks 20 may each relate to one or more of the following: tools, checklists, templates, procedures, tasks, methods, activities, processes, standards, and policies. In particular embodiments, tasks 20 may each correspond (and be traceable) to one or more particular KPAs 24. In addition to tasks 20, task collaterals associated with tasks 20 may also be identified. Task collaterals may include implementation aids (such as task descriptions for compliance with ML 22, templates, checklists policy statements, training and presentation materials, software tools, sample work products, and other implementation aids) and other resources.

(Spec. 7, l. 18 to 9, l. 8.)

Miller Reference

2. Miller describes a system and method for “arranging and administering an organization’s infrastructure and a project of interest so that the organization and the product may be more mature, as measured by the CMM” (Capability Maturity Model for Software (SW-CMM)) or, more

generally, Capability Maturity Model (CMM)). (¶¶ [0002]-[0003].)
Generally, Miller describes a “CMM in a Box” method that assists an organization in reaching higher levels in the CCM. (¶¶ [0015]-[0016], [0030].) In particular, the steps in the CCM method:

include the creation or updating of various documentation (or monuments) that detail and verify the execution of tasks performed by the organization. These documents may be used to demonstrate compliance with the higher levels of the CMM or CMMI A short listing and summary of some of the various documents that may be created or updated during the steps of the CMM in a Box method 10 is listed below in Table 1.

(¶ [0031].) For example, Miller describes a software organization’s development process (¶¶ [0003], [0037]-[0038]; *see generally*, ¶¶ [0033]-[0049], Figs. 1, 2A-2D), and software project management processes (¶¶ [0129]-[0145]; Figs. 5A-5D). These processes include development of a project plan (¶ [0031]); related work plans – “the organization may further create a work plan a ‘bottom-up’ or task-level project work plan based upon estimates where critical paths and dependencies are defined and managed within a project work-planning tool, such as Microsoft Project and Project Workbench.RTM” (¶ [0038]); organizing project resources, work assignments, and other tasks (¶ [0040]); and controlling work by monitoring and evaluating work and deliverables against the plan (¶ [0045]).

3. Miller implements the CMM in a box system and method as illustrated in figures 11A, 11B, 12, and 14 (*see* ¶¶ [0278]-[0289], [0291], [0299]-[0311]). In one embodiment, Miller describes a CMM implementation system (1100) including various modules with an associated database (1120) containing information about the organization. (¶¶ [0280]-[0282]; Figs. 11A & 11B.) In another embodiment, Miller describes an

accelerated process improvement framework (APIF) (1200) including an enterprise document management system (EDMS) (1210) with associated storage devices (1220) containing files (1222) that include data relating to steps of the CMM method. (¶¶ [0283]-[0287]; Fig. 12.) In particular, Miller utilizes templates (¶ [0278]) and/or task lists (¶ [0279]) and/or document files (¶ [0286]) to implement the CCM in a box as illustrated in the figures (¶¶ [0280]-[0287]). For example, in the APIF:

[T]he file storage device 1220 contains files 1222 that store data relating to one or more steps in Method 10 (FIG. 1). Thus, when performing a step in Method 10, a user may select a file 1222 corresponding to that step. The file 1222 may then provide the user with the information and instructions needed to accomplish that step. For instance, the file may direct the user to undertake certain quality control actions during the development of a software application. The file 1222 may further specify documentation that must be completed by the user during the step. In this way, a user may perform Method 10 of FIG. 1 by opening one or more files 1222, following the actions specified in the files 1222, and then, when applicable, completing required documentation specified in the files 1222. The file 1222 may alternatively instruct the user on the relationship of that step with other steps in Method 10. In doing so, the file 1222 may direct the user to other, subsequent steps in Method 10 by directing the user to files 1222 corresponding to these subsequent steps.

(¶ [0286]; *see* ¶ [0031] & Table 1 (appended to Miller).)

ANALYSIS

Appellant has elected to argue claims 1-20 together as a group based on representative claim 1, and does not separately argue independent claims 7, 13, 19, and 20, nor any of the dependent claims – claims 2-6 (dependent on claim 1), 8-12 (dependent on claim 7), and 14-18 (dependent on claim

13). (App. Br. 23-24, 26). Therefore, we select independent claim 1 as the representative of Appellant's arguments and grouping, and we will address Appellant's arguments with respect thereto. 37 C.F.R. § 41.37(c)(1)(vii). *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

Appellant has the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). The Examiner sets forth a detailed explanation of a reasoned conclusion of anticipation in the Examiner's Answer with respect to representative claim 1. (Ans. 4-6, 10-14.) Therefore, we look to the Appellant's Briefs to show error in the proffered reasoned conclusion. *See Kahn*, 441 F.3d at 985-86.

*Arguments Concerning the Examiner's Rejection of
Claims 1-20 under 35 U.S.C. § 102(e)*

Appellant contends that Miller does not disclose Appellant's recited database – “the database . . . or the multiple repository system in Miller can [not] properly be considered *a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects*, as independent Claim 1 recites.” (App. Br. 24.) Appellant also contends that “[n]owhere does Miller disclose, teach, or suggest that [Miller's database and “multiple repository system”] contain each and every one of the *first resources* that independent Claim 1 specifically recites.” (App. Br. 25 (underlining added); *see* App. Br. 24-25.)

The Examiner finds that the Miller reference discloses each feature of Appellant's claim 1, and provides a detailed explanation as to why

Appellant's arguments fail to overcome the Examiner's anticipation rejection. (Ans. 4-6, 10-14.) Specifically, the Examiner finds that Miller discloses the disputed features of "a database . . . containing resources accessible to the client systems using [a] server system," that the resources comprise "first resources specifying a plurality of tasks to be performed within the process," and that "for each task," "one or more" attributes are specified. (Ans. 4-5 (underlining added); *see* Ans. 10-14.)

Based on the record before us, we do not find error in the Examiner's anticipation rejection of representative claim 1. We agree with the Examiner that the Miller reference discloses the disputed features. We begin our analysis by construing Appellant's disputed claim limitation.

We give claim terminology the "broadest reasonable interpretation consistent with the [S]pecification" in accordance with our mandate that "claim language should be read in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). We note that Appellant does not explicitly define "resources," "tasks," or their attributes – e.g., a "description of the task" or "one or more activities to be performed for the task" – either in the claim or the Specification. (FF 1.) Nor, does Appellant describe in the Specification (FF 1) or positively recite in the claim how the recited "first resources" specify ("specifying") the tasks and their attributes.

We also note that the recitation of "first resources" (or resources, generally), tasks, and specific related attributes (e.g., a "description of the task") constitute non-functional descriptive material. Appellant's recited resources, tasks, and attributes correspond to data stored in a database and

available to a client. These recitations merely recite what the information or data represents. How the data in a database may be named or labelled (e.g., “resources,” “tasks,” and data “specifying” attributes of tasks) does not functionally change the database. The acts of storing, identifying, and retrieving data in a database are the same regardless of how the data may be named. Merely labelling data as a resource or a task, as opposed to some other unique identifier, does not further limit the claimed invention either functionally or structurally. The informational content of the data thus represent non-functional descriptive material entitled to no weight in the patentability analysis. *See Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (informative), *aff’d*, No. 06-1003 (Fed. Cir. June 12, 2006) (Rule 36) (“wellness-related” data in databases and communicated on distributed network did not functionally change either the data storage system or the communication system used in the claimed method). *See also In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004); *Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential) (discussing non-functional descriptive material).

Accordingly, we broadly but reasonably construe the disputed limitations to mean a database containing data (resources) accessible to client systems using a server system – i.e., “a database associated with the server system and containing resources accessible to the client systems using the server system” – the data (resources) further comprising data specifying related data (tasks) and attributes of the related data – i.e., “first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more of: a description of the task[, etc.].” This construction is consistent with the cited references, Appellant’s

Specification, and the knowledge of those skilled in the art at the time of Appellant's invention.

As detailed in the Findings of Fact section *supra*, the Miller reference describes a system for managing software according to a Capability Maturity Model for Software (SW-CMM). (FF 2.) The same model utilized by Appellant. In particular, Miller describes a "CMM in a Box" method that includes steps for "the creation or updating of various documentation (or monuments) that detail and verify the execution of tasks performed by the organization." (FF 2.) Miller describes implementing the CMM in a box system utilizing a database accessible to clients through a server system – specifically, a system (CMM system) including various modules and an associated database, and an accelerated process improvement framework (APIF) including databases and storage devices. The APIF includes an enterprise document management system (EDMS) and associated storage devices containing files which include data relating to steps of the CMM method. For example, the database and/or APIF system files may include templates, task lists, and/or document files. (FF 3.) Miller describes the data (templates, task lists, and/or document files) as documenting a software organization's development process and software project management processes, which include the development of a project plan and related work plans ("task-level project work plan[s]"), organizing project resources, work assignments, and other tasks, and controlling work by monitoring and evaluating work and deliverables against the plan. (FF 2.) Miller explicitly describes the functionality of the data within the CMM system and method: "when performing a step in [the method] a user may select a file . . . corresponding to that step[,] . . . [t]he file . . . provide[s] the user with the

information and instructions needed to accomplish that step.” (FF 3; Miller, ¶ [0286].)

Thus we find that Miller discloses a database containing data accessible to client systems using a server system. Therefore, a broad but reasonable interpretation of Appellant’s claim 1 reads on at least one embodiment of Miller. Moreover, even if we confer, *arguendo*, some weight to Appellant’s recited resources, tasks, and attributes, we find Miller discloses a database containing data (resources) accessible to client systems using a server system, and that the resources comprise data specifying related data (tasks) and attributes of the related data – i.e., “first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more” attributes (emphasis added). Appellant’s Specification explicitly describes Appellant’s resources and tasks to include “tools, checklists, templates, procedures, tasks, methods, activities, processes, standards, and policies.” In view of Appellant’s broad disclosure of resources and tasks, we find Miller discloses a database containing resources (resource data) accessible to client systems, and that the resources comprise data specifying related tasks (task data) and attributes of the related task data.

We find Appellant’s contrary arguments unpersuasive. Specifically, Appellant mischaracterizes Miller as failing to describe a database containing data accessible to client systems using a server system. We find (*supra*) that Miller discloses this feature. Further, Appellant’s arguments are not commensurate with the scope of the recited claim limitations. Appellant argues that Miller fails to disclose “each and every one of the *first resources* that independent Claim 1 specifically recites.” (App. Br. 25 (underlining

added for emphasis.) As we explain (*supra*), however, this is non-functional descriptive material that does not further distinguish the claimed invention. Moreover, even if we confer, *arguendo*, some weight to Appellant's recited resources, tasks, and attributes, Appellant's claim does not recite every resource or first resource, it instead recites "the resources comprising at least: first resources specifying a plurality of tasks to be performed within the process and specifying for each task one or more of: a description of the task" – which we construe to mean resource data specifying (describing) related task data, and further specifying one or more, but not necessarily all, of the recited task attributes.

We, therefore, find the Miller reference discloses Appellant's disputed claim limitations as recited in Appellant's independent claim 1. Appellant does not separately argue remaining claims 2-20 (*supra*). Thus, we find the Miller reference anticipates Appellant's claims 1-20 for the reasons set forth with respect to representative claim 1. It follows that Appellant does not persuade us of error in the Examiner's anticipation rejection of claims 1-20, and we affirm the Examiner's rejection of these claims.

CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 102(e).

DECISION

We affirm the Examiner's rejection of claims 1-20 under 35 U.S.C. § 102(e).

Appeal 2009-005291
Application 10/696,817

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rwk

Kramer Levin Naftalis & Frankel LLP
Intellectual Property Department
1177 Avenue of the Americas
New York, NY 10036